IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.632 of 1991

Sitaram Govind Nikam .. Petitioner

Vs.

Kum.Rupali d/o. Vijaysing Sadashiv Benadikar & Ors. .. Respondents

Mr.V.S.Gokhale for the Petitioner.
Mr.Yashodhan Sakhare for the Respondents.

CORAM : DR.S.RADHAKRISHNAN,J.

DATE : 1ST SEPTEMBER, 2006.

P.C.:

1. Heard the learned Counsel for the parties. By this Petition, the Petitioner-Tenant is challenging the order of the Maharashtra Revenue Tribunal at Kolhapur in Revision Application No.MRT.KP.164 of 1987 dated 24th April, 1990.

2. It appears that the above Petition had came up for final hearing before my learned brother Mr.Justice Khanwilkar and after some arguments, the Learned Single Judge found that on a very crucial issue as to whether there was a genuine partition in the joint family property or not, there was no finding. In view thereof, the Learned Single Judge, by an order dated 10th August, 2004 had remanded back the matter to the Lower Appellate Authority to give finding after examining the relevant records and also allowing the parties to adduce further evidence as to whether there was any genuine partition with regard to the joint family property.

3. In pursuance of the aforesaid order, the Lower Appellate Authority had given its findings by its order dated 24th March, 2005.

4. In view of the above, in the interest of both the parties and in the larger interest of justice, the matter is now remanded back to the Commissioner of Revenue, at Pune (since the Maharashtra Revenue Tribunal has already been abolished and the powers of the said Tribunal have now been vested with the Commissioner of Revenue), so as to consider the entire issue afresh and pass an appropriate order. In view thereof, the impugned order dated 24th April, 1990 passed by the Maharashtra Revenue Tribunal, Kolhapur stands quashed and set aside and the Commissioner is directed to hear both the parties afresh, after taking into account all the records and material including the aforesaid findings given by the Lower Appellate Authority dated 24th March, 2005 which is in favour of the Petitioner-Tenant. The learned Counsel for the Petitioner as well as the Respondents have agreed that they will appear before the Commissioner of Revenue at Pune on 9th October, 2006, so as to enable the Learned Commissioner to fix the schedule of hearing. The Commissioner of Revenue, Pune shall expeditiously decide the same preferably on or before 30th April, 2007. Rule is accordingly made absolute with no order as to costs.

(DR.S.RADHAKRISHNAN,J.)